

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON OFFICE**

BETWEEN Maria Ortiz (Applicant)
AND ABC Plumbing Drainage & Gas Limited (First Respondent)
Absolute Plumbing Drains & Gas Limited (Second Respondent)
REPRESENTATIVES G Ogilvie for Applicant
No appearance by Respondents
MEMBER OF AUTHORITY G J Wood
INVESTIGATION 21 March 2006
MEETING
DATE OF 22 March 2006
DETERMINATION

DETERMINATION OF THE AUTHORITY

1. This application involves the applicant, Ms Maria Ortiz, seeking a compliance order against the first respondent (ABC Plumbing) and the second respondent (Absolute Plumbing), plus costs.
2. The compliance order relates to a substantive determination in which I determined that Ms Ortiz was employed by ABC Plumbing and was unjustifiably dismissed. I ordered \$8,000 in compensation, \$720 gross in lost remuneration, \$1,700 in costs and \$100 in expenses to be paid to Ms Ortiz.
3. I reserved for later determination, should it be necessary for enforcement purposes, the issue of whether or not Absolute Plumbing had any responsibility for any wages or other compensation awarded to Ms Ortiz.
4. A statement in reply was received from ABC Plumbing only. It stated that ABC Plumbing wished to challenge the Authority's substantive determination. That statement in reply was filed three months outside of the challenge period and the

Authority's determination has still not been challenged some four months after it was issued. The statement in reply also suggested mediation. I declined mediation, as I considered it would not be constructive, given the history of the matter, as the substantive issues between the parties had been to mediation twice and it appeared clear that the amounts awarded by the Authority had not been paid to Ms Ortiz.

5. The application for a compliance order was then set down, on 23 February 2006, for an investigation meeting on 21 March. On 12 March the Authority received a facsimile from Absolute Plumbing (the first contact the Authority had had from it) stating that its manager was away on annual leave from 21 March and requesting the Authority to reschedule the investigation meeting. On 13 March the respondents were sent a facsimile requesting information on the identity of the manager in question, the actual dates of their annual leave and the manager's availability for an investigation meeting on 3, 4 or 7 April. The respondents were informed that the investigation meeting would proceed unless the Authority was satisfied, by further information from the respondents, that it was not in the interests of justice to do so. The Authority received no response to this facsimile.
6. At the commencement of the investigation meeting neither respondent was represented. A support officer tried to contact Mr Gordon Anslow, the sole director and shareholder of both respondents. The Authority's support officer was informed that Mr Anslow was away on leave and that it was not known when he would be back.
7. Both respondents had had adequate opportunity to attend or be represented at the investigation meeting. I determined that no good cause had been shown for non-attendance or representation by the respondents. I then proceeded to determine the matter as if the respondents had duly attended or been represented.
8. Ms Ortiz gave evidence, which I accept (having no reason not to do so and it not being inconsistent with any material provided by the respondents), that she has never been paid the sums owing to her. Ms Ortiz also gave evidence, which I again accept, that correspondence had been sent to the respondents on her behalf seeking the monies owing, but that no response had ever been received.

9. While the Registrar of Companies has initiated action to remove ABC Plumbing from the Companies Register, that action has been suspended, perhaps in part because of an objection made on Ms Ortiz's behalf. It follows that there is therefore no impediment to a compliance order being awarded against ABC Plumbing.
10. As ABC Plumbing was Mr Ortiz's employer and therefore liable for the amounts awarded to her, it is appropriate that a compliance order should follow in the event of non-payment.
11. I therefore order the first respondent, ABC Plumbing Drainage & Gas Limited, to pay to the applicant, Ms Maria Ortiz, the following sums within fourteen days of the date of this determination:
 - \$8,000 in compensation,
 - \$720 gross in unpaid remuneration,
 - \$1,700 in costs and
 - \$100 in expenses.
12. I also formally refer ABC Plumbing to s.140(6) of the Act, which sets out the powers of the Court, including the awarding of fines and the sequestration of property, if the orders of the Authority are not complied with.
13. As requested, I also reserve again, for later determination, should it be necessary for enforcement purposes, the issue of whether or not Absolute Plumbing has any responsibility for any wages or other compensation owing to Ms Ortiz.

14. Costs of \$250 plus expenses of \$70 were also sought on Ms Ortiz's behalf. I am satisfied that these costs were reasonably incurred in all the circumstances of this case. I therefore order the respondents, ABC Plumbing Drainage & Gas Limited and Absolute Plumbing Drains & Gas Limited, to pay to the applicant, Ms Maria Ortiz, the sums of \$250 in costs and \$70 in expenses, on the basis of joint and several liability.

G J Wood
Member of Employment Relations Authority